

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 914 OF 2006

Vishwesh Engineering

Pvt. Ltd., . . . Petitioners.

vs.

Razak Shaikh

& Anr. . . Respondents.

Mr. V.P. Vaidya for petitioners.

Mr. A.H. Patel a/w Rahul Nerlekar

for respondent no.1.

CORAM : S.U. KAMDAR, J.

DATE : 3rd April, 2006.

P.C.:

. The present petition is filed challenging the order and judgment dated 5.9.2005 passed by the 8th Labour Court, Bombay. By the impugned order and judgment the reference of the respondent workman for reinstatement and full back wages has been granted.

2. In a complaint filed by the respondent workman that he has been wrongfully dismissed, the contentions raised by the petitioner employer is

that the respondent workman was never an employee of the petitioner company. The relevant portion of the defence raised in the written statement reads as under :-

1) At the very outset the Company raises a preliminary objection against the very maintainability of this reference, on the ground that the disputant was never employed as "workman" in the Company, as understood under section 2(s) of the Industrial Disputes Act, 1947 (hereinafter called as the said central Act) for hire or wages, with the result that the reference as has been made to this Honourable court, is not maintainable under the said Act, and it is therefore prayed that the reference may kindly be rejected in limine."

There is no other contentions raised in the said written statement. The said contention has been tried by the trial Court and the trial Court has come to the conclusion that the respondent was an employee of the petitioner. In support of the said conclusion, the trial Court has relied upon an appointment letter dated 3.1.1981 which was issued by one M/s. Goradia Engg. Co. P. Ltd., It is not disputed before me that Vishwesh Engineering Pvt. Ltd., is the same concern as that of M/s. Goradia

Engg. Co. P. Ltd., Thus, obviously the respondent was an employee of the petitioner company. The trial Court has also further relied upon the muster roll register of both the aforesaid companies i.e. the petitioner as well as the erstwhile company M/s. Goradia Engg. Co. P. Ltd., in which the name of the respondent workman as a workman has been found. The learned counsel for the petitioner however contended that in fact the respondent resigned from service on 2.11.1998 and his claim was settled on 4.11.1998. If it is so then obviously respondent was in employment with the petitioner and still petitioner raised false contention before the Industrial Court. I am of the further opinion that the aforesaid plea was not take before the Industrial Court. No such case was pleaded either in the written statement nor in the argument before the trial Court, thus it is not possible to accept the aforesaid contention. The only issue before the trial Court was that the respondent was never the employee of the petitioner which on the basis of the material and evidence on record, a finding is given against the petitioner. I do not find any reason to interfere with the said finding which is based on cogent material and evidence before the trial Court in writ jurisdiction under Article 226 of the Constitution of India. Thus, the petition fails and the same is dismissed. No order as to costs.